

Representative Brad M. Daw proposes the following substitute bill:

CANNABIS CULTIVATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill deals with the cultivation, processing, and sale of cannabis.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Agriculture and Food, by January 1, 2019, to ensure the cultivation and processing of cannabis in the state for academic or medical research purposes;
- ▶ authorizes the Department of Agriculture and Food to:
 - contract with a third party to cultivate or process cannabis; and
 - make rules;
- ▶ establishes a state dispensary for cannabis that has been processed into a medical dosage form;
- ▶ states that an individual who possesses, processes, or grows cannabis does not violate the Controlled Substances Act if the individual is authorized to possess, process, or grow cannabis for academic or medical research purposes; and
- ▶ directs the Department of Financial Institutions to issue cannabis payment processor licenses and enforce cannabis payment processor operating requirements.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **7-1-401**, as last amended by Laws of Utah 2015, Chapter 284

33 **58-37-3.6**, as enacted by Laws of Utah 2017, Chapter 398

34 ENACTS:

35 **4-41-201**, Utah Code Annotated 1953

36 **4-41-202**, Utah Code Annotated 1953

37 **4-41-203**, Utah Code Annotated 1953

38 **4-41-204**, Utah Code Annotated 1953

39 **4-41-301**, Utah Code Annotated 1953

40 **4-41-302**, Utah Code Annotated 1953

41 **4-41-303**, Utah Code Annotated 1953

42 **4-41-304**, Utah Code Annotated 1953

43 **7-26-101**, Utah Code Annotated 1953

44 **7-26-102**, Utah Code Annotated 1953

45 **7-26-201**, Utah Code Annotated 1953

46 **7-26-202**, Utah Code Annotated 1953

47 **7-26-203**, Utah Code Annotated 1953

48 **7-26-204**, Utah Code Annotated 1953

49 **7-26-301**, Utah Code Annotated 1953

50 **7-26-401**, Utah Code Annotated 1953

51

52 *Be it enacted by the Legislature of the state of Utah:*

53 Section 1. Section **4-41-201** is enacted to read:

54 **Part 2. Cannabis Cultivation**

55 **4-41-201. Title.**

56 This part is known as "Cannabis Cultivation."

57 Section 2. Section **4-41-202** is enacted to read:

58 **4-41-202. Definitions.**

59 As used in this part:

60 (1) "Cannabis" means any part of a cannabis plant, whether growing or not, with
61 tetrahydrocannabinol content greater than 0.3%.

62 (2) "Medicinal dosage form" means the same as that term is defined in Section
63 58-37-3.6.

64 Section 3. Section **4-41-203** is enacted to read:

65 **4-41-203. Department to cultivate cannabis.**

66 (1) The department shall, by January 1, 2019:

67 (a) ensure the cultivation of cannabis in the state for academic or medical research
68 purposes; and

69 (b) ensure that cannabis grown in the state pursuant to Subsection (1)(a) may be
70 processed into a medicinal dosage form.

71 (2) The department may contract with a private entity to fulfill the duty described in
72 Subsection (1).

73 (3) In issuing a contract to a private entity as described in Subsection (2), the
74 department shall:

75 (a) comply with Title 63G, Chapter 6a, Utah Procurement Code; and

76 (b) provide regular, strict oversight of a private entity awarded a contract to ensure that
77 the private entity complies with the awarded contract, state law, and department rules.

78 (4) The department shall set a fee, to be paid by a person who is awarded a contract
79 under Subsections (2) and (3), consistent with Section [4-2-103](#).

80 Section 4. Section **4-41-204** is enacted to read:

81 **4-41-204. Department to make rules regarding cultivation and processing.**

82 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
83 Administrative Rulemaking Act:

84 (1) to ensure:

85 (a) cannabis cultivated in the state pursuant to this chapter is cultivated from
86 state-approved seed sources; and

87 (b) a private entity contracted to cultivate cannabis has sufficient security protocols;

88 and

89 (2) governing an entity that puts cannabis into a medicinal dosage form, including
90 standards for health and safety.

91 Section 5. Section **4-41-301** is enacted to read:

92 **4-41-301. Department to establish a state dispensary.**

93 (1) The department shall by July 1, 2019, establish a state dispensary as described in
94 this section.

95 (2) The state dispensary shall:

96 (a) receive cannabis that has been processed into a medicinal dosage form by a private
97 entity with a contract pursuant to Section 4-41-203 from the private entity; and

98 (b) sell the cannabis that has been processed into a medicinal dosage form at the price
99 set by the department pursuant to Section 4-41-303 to any of the following purchasers:

100 (i) a qualified academic research institution, as described in Section 4-41-304;

101 (ii) a qualified medical research institution, as described in Section 4-41-304; or

102 (iii) a patient with a recommendation to try cannabis from the patient's physician.

103 (3) In selling cannabis that has been processed into a medicinal dosage form to a
104 patient, as described in Subsection (2)(b)(iii), the state dispensary shall only sell up to the
105 amount of cannabis recommended by the patient's physician.

106 (4) (a) The department may contract with a private entity to serve as a courier for the
107 state dispensary, delivering purchased cannabis that has been processed into a medicinal
108 dosage form to a purchaser described in Subsection (2).

109 (b) In issuing the contract described in Subsection (4)(a), the department shall comply
110 with Title 63G, Chapter 6a, Utah Procurement Code, and provide regular oversight of the
111 private entity.

112 Section 6. Section **4-41-302** is enacted to read:

113 **4-41-302. Labeling.**

114 The department shall, in conjunction with the Division of Occupational and
115 Professional Licensing, establish by rule in accordance with Title 63G, Chapter 3, Utah
116 Administrative Rulemaking Act, standards for labeling cannabis that has been processed into a
117 medicinal dosage form and is being sold at the state dispensary established in Section
118 4-41-301.

119 Section 7. Section **4-41-303** is enacted to read:

120 **4-41-303. Department to set prices.**

121 (1) The department shall set a price schedule for cannabis that has been processed into
122 a medicinal dosage form and sold at the state dispensary.

123 (2) The price schedule described in Subsection (1) shall take into consideration:

124 (a) the demand for the product;

125 (b) the labor required to cultivate and process the product into a medicinal dosage
126 form;

127 (c) the regulatory burden involved in the creation of the product; and

128 (d) any other consideration the department considers necessary.

129 (3) The price set by the department under Subsection (1) shall include:

130 (a) sales tax, to be remitted by the state dispensary to the State Tax Commission; and

131 (b) a set fee, to be retained by the department to fund the state dispensary and the
132 courier described in Subsection [4-41-301\(3\)](#), if any.

133 Section 8. Section **4-41-304** is enacted to read:

134 **4-41-304. Department to make rules regarding purchasers, communication** $\hat{H} \rightarrow$ [;]

134a **-- Report.**

135 (1) $\leftarrow \hat{H}$ The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
136 Administrative Rulemaking Act:

137 $\hat{H} \rightarrow$ ~~(1)~~ (a) $\leftarrow \hat{H}$ to determine whether an entity engaged in academic or medical
137a research qualifies to
138 purchase cannabis pursuant to this chapter; and

139 $\hat{H} \rightarrow$ ~~(2)~~ (b) $\leftarrow \hat{H}$ on how the state dispensary shall provide information to a patient's
139a physician after a
140 patient purchases cannabis from the state dispensary.

140a $\hat{H} \rightarrow$ **(2)(a) The department shall immediately report to the Legislature, or the Health**
140b **and Human Services Interim Committee if the Legislature is not in general session, if cannabis**
140c **is removed from the list of Schedule I drugs under the Controlled Substances Act so that the**
140d **Legislature may repeal this chapter and any relevant section in state code.** $\leftarrow \hat{H}$

141 Section 9. Section **7-1-401** is amended to read:

142 **7-1-401. Fees payable to commissioner.**

143 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
144 institution under the jurisdiction of the department shall pay an annual fee:

145 (a) computed by averaging the total assets of the depository institution shown on each
146 quarterly report of condition for the depository institution for the calendar year immediately
147 proceeding the date on which the annual fee is due under Section [7-1-402](#); and

148 (b) at the following rates:

149 (i) on the first \$5,000,000 of these assets, the greater of:

- 150 (A) 65 cents per \$1,000; or
151 (B) \$500;
152 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
153 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
154 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
155 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
156 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
157 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.
- 158 (2) A financial institution with a trust department shall pay a fee determined in
159 accordance with Subsection (7) for each examination of the trust department by a state
160 examiner.
- 161 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
162 pay a basic fee of \$25 instead of the fee required under Subsection (1).
- 163 (4) A trust company that is not a depository institution or a subsidiary of a depository
164 institution holding company shall pay:
165 (a) an annual fee of \$500; and
166 (b) an additional fee determined in accordance with Subsection (7) for each
167 examination by a state examiner.
- 168 (5) Any person or institution under the jurisdiction of the department that does not pay
169 a fee under Subsections (1) through (4) shall pay:
170 (a) an annual fee of \$200; and
171 (b) an additional fee determined in accordance with Subsection (7) for each
172 examination by a state examiner.
- 173 (6) A person filing an application or request under Section [7-1-503](#), [7-1-702](#), [7-1-703](#),
174 [7-1-704](#), [7-1-713](#), [7-5-3](#), [~~or~~] [7-18a-202](#), or [7-26-201](#) shall pay:
175 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
176 person:
177 (A) is a person with authority to transact business as:
178 (I) a depository institution;
179 (II) a trust company; or
180 (III) any other person described in Section [7-1-501](#) as being subject to the jurisdiction

181 of the department; and

182 (B) has total assets in an amount less than \$5,000,000; or

183 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

184 (b) all reasonable expenses incurred in processing the application.

185 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55

186 per hour:

187 (i) for each examiner; and

188 (ii) per hour worked.

189 (b) For an examination of a branch or office of a financial institution located outside of
190 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
191 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
192 conducting the examination.

193 (8) In addition to a fee under Subsection (5), a person registering under Section
194 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

195 (9) In addition to a fee under Subsection (5), a person applying for licensure under
196 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

197 Section 10. Section 7-26-101 is enacted to read:

198 **CHAPTER 26. CANNABIS PAYMENT PROCESSOR**

199 **7-26-101. Title.**

200 This chapter is known as "Cannabis Payment Processor."

201 Section 11. Section 7-26-102 is enacted to read:

202 **7-26-102. Definitions.**

203 As used in this chapter:

204 (1) "Cannabis" means the same as that term is defined in Section 4-41-202.

205 (2) "Cannabis payment processor" means a person that facilitates payment:

206 (a) without using cash;

207 (b) electronically; and

208 (c) between a cannabis producer and an entity engaged in academic or medical
209 research.

210 (3) "Cannabis producer" means:

211 (a) a private entity that is contracted with the Department of Agriculture and Food,

212 pursuant to Section 4-41-203, to cultivate cannabis or process it into a medicinal dosage form;
213 and

214 (b) the Department of Agriculture and Food, if the Department of Agriculture and Food
215 is engaged in the cultivation or processing of cannabis.

216 Section 12. Section 7-26-201 is enacted to read:

217 **7-26-201. Cannabis payment processor -- License.**

218 (1) A person may not act as a cannabis payment processor without a license issued by
219 the department under this section.

220 (2) An applicant for a cannabis payment processor license shall:

221 (a) submit to the department:

222 (i) the applicant's name, business address, and place of incorporation;

223 (ii) the name of each owner, officer, director, board member, shareholder, agent,
224 employee, or volunteer of the applicant; and

225 (iii) a fee in accordance with Section 7-1-401; and

226 (b) present evidence to the department that:

227 (i) the applicant is capable of electronically receiving funds from, and distributing
228 funds to:

229 (A) a cannabis producer; and

230 (B) an entity engaged in academic or medical research;

231 (ii) the applicant has a partnership, service agreement, or service contract with a
232 federally insured depository institution that agrees to clear cannabis product transactions; and

233 (iii) the applicant is, at minimum:

234 (A) a level one payment card industry data security standard-validated provider;

235 (B) certified by Europay, MasterCard, and Visa; and

236 (C) capable of integrating with 50 payment processors.

237 (3) A license issued under this section is valid for two years.

238 (4) The department may determine, by rule made in accordance with Title 63G,
239 Chapter 3, Utah Administrative Rulemaking Act:

240 (a) any additional information an applicant for a cannabis payment processor is
241 required to submit to the department; and

242 (b) procedural requirements for an applicant for a license under this chapter.

243 (5) An applicant for a cannabis payment processor license under this section may
244 request that the department treat information that the applicant submits to the department as
245 confidential under Section [7-1-802](#).

246 Section 13. Section **7-26-202** is enacted to read:

247 **7-26-202. Renewal -- Abandonment.**

248 The department shall renew a person's cannabis payment processor license every two
249 years if, at the time of renewal, the person:

250 (1) meets the requirements of Section [7-26-201](#);

251 (2) demonstrates the criteria described in Subsection [7-26-203\(2\)](#); and

252 (3) pays the department a license renewal fee in an amount that is the same as the
253 licensing fee determined by the department in accordance with Section [7-1-401](#).

254 Section 14. Section **7-26-203** is enacted to read:

255 **7-26-203. Number of licenses -- Criteria for awarding a license.**

256 (1) The department may issue up to a number of cannabis payment processor licenses
257 determined by the department.

258 (2) The department shall evaluate an applicant for a cannabis payment processor
259 license to determine to what extent the applicant has demonstrated:

260 (a) experience with:

261 (i) establishing and running a business in a related field;

262 (ii) operating a payment processing system;

263 (iii) complying with a regulatory environment; and

264 (iv) training, evaluating, and monitoring employees;

265 (b) connections to the local community;

266 (c) that the applicant will keep the cost of the applicant's products or services low; and

267 (d) that the applicant will maximize convenience, efficiency, and security for

268 processing cannabinoid product payments.

269 (3) After an appropriate supervisor reviews an applicant's application under Section

270 [7-26-201](#) and evaluates the application for the criteria described in Subsection (2), the

271 appropriate supervisor shall submit the department's findings and recommendations to the

272 commissioner.

273 (4) After reviewing the findings and recommendations described in Subsection (3), the

274 commissioner shall make a final determination that awards or denies a cannabis payment
275 processor license to an applicant.

276 (5) In making a recommendation of which applicant to award a cannabis payment
277 processor license under Subsection (1), the department shall consult, to the extent that the
278 consultation involves compatibility and coordination of a cannabis payment processor licensee
279 with other state cannabinoid medicine regulation, with:

280 (a) the executive director of the Department of Commerce or the executive director's
281 designee;

282 (b) the chair of the State Tax Commission or the chair's designee;

283 (c) the chief information officer of the Department of Technology Services or the chief
284 information officer's designee;

285 (d) the executive director of the Department of Health or the executive director's
286 designee;

287 (e) the commissioner of the Department of Agriculture and Food or the commissioner's
288 designee; and

289 (f) the commissioner of the Department of Public Safety or the commissioner's
290 designee.

291 (6) An applicant for which the department denies an application is entitled to judicial
292 review under Section [7-1-714](#).

293 Section 15. Section **7-26-204** is enacted to read:

294 **7-26-204. Cash system if no cannabis payment processor available.**

295 (1) The department shall determine if no qualified cannabis payment processor
296 submitted an application for a license under this chapter.

297 (2) If the department makes the determination described in Subsection (1), the
298 department shall issue a statement that a cannabis payment processor is not available and that
299 an academic or medical research entity may use cash to pay for products and services related to
300 cannabinoid products.

301 Section 16. Section **7-26-301** is enacted to read:

302 **7-26-301. Operating requirements.**

303 (1) Except as provided in Section [7-26-204](#), a cannabis payment processor may not
304 accept or disburse cash in a transaction involving cannabis.

305 (2) A cannabis payment processor may not act as a cannabis payment processor for a
306 person unless the person is:

- 307 (a) a cannabis cultivator; or
- 308 (b) an academic or medical research entity.

309 Section 17. Section **7-26-401** is enacted to read:

310 **Part 4. Enforcement**

311 **7-26-401. Examination -- Administrative action.**

312 (1) The department may examine the records or activities of a cannabis payment
313 processor at any time in order to determine if the cannabis payment processor is complying
314 with this chapter.

315 (2) If the department determines that a person is acting as a cannabis payment
316 processor without a license issued under this section, the department may:

- 317 (a) order the person to cease and desist from acting as a cannabis payment processor;
- 318 and

319 (b) assess the person a fine in an amount determined by the department by rule made in
320 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

321 (3) If the department determines that a person with a cannabis payment processor
322 license issued by the department has violated this chapter, the department may:

- 323 (a) order the person to cease and desist from the violation;
- 324 (b) assess the person a fine in an amount determined by the department by rule made in
325 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
- 326 (c) revoke the person's license.

327 Section 18. Section **58-37-3.6** is amended to read:

328 **58-37-3.6. Exemption for possession or distribution of a cannabinoid product or**
329 **expanded cannabinoid product pursuant to an approved study.**

330 (1) As used in this section:

- 331 (a) "Cannabinoid product" means a product intended for human ingestion that:
 - 332 (i) contains an extract or concentrate that is obtained from cannabis;
 - 333 (ii) is prepared in a medicinal dosage form; and
 - 334 (iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.
- 335 (b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.

336 (c) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).

337 (d) "Expanded cannabinoid product" means a product intended for human ingestion

338 that:

339 (i) contains an extract or concentrate that is obtained from cannabis;

340 (ii) is prepared in a medicinal dosage form; and

341 (iii) contains less than 10 units of cannabidiol for every one unit of

342 tetrahydrocannabinol.

343 (e) "Medicinal dosage form" means:

344 (i) a tablet;

345 (ii) a capsule;

346 (iii) a concentrated oil;

347 (iv) a liquid suspension;

348 (v) a transdermal preparation; or

349 (vi) a sublingual preparation.

350 (f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the

351 description in Subsection [58-37-4\(2\)\(a\)\(iii\)\(AA\)](#).

352 (2) Notwithstanding any other provision of this chapter, an individual who possesses or

353 distributes a cannabinoid product or an expanded cannabinoid product is not subject to the

354 penalties described in this title for the possession or distribution of marijuana or

355 tetrahydrocannabinol to the extent that the individual's possession or distribution of the

356 cannabinoid product or expanded cannabinoid product complies with Title 26, Chapter 61,

357 Cannabinoid Research Act.

358 (3) Notwithstanding any other provision of this chapter, an individual who grows,

359 processes, or possesses cannabis is not subject to the penalties described in this title for the

360 growth, processing, or possession of marijuana to the extent that the individual is authorized to

361 grow, process, or possess the cannabis under Section [4-41-203](#) and is in compliance with any

362 rules made pursuant to Section [4-41-204](#).